35-K

SUPREME COURT OF THE UNITED STATES.

No. 105.

PHINEAS O., NABBY, JABEZ, AND BENJAMIN B. SARGEANT, HEIRS OF SAMUEL SARGEANT, PLAINTIFFS IN ERROR,

vs.

THE STATE BANK OF INDIANA.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES, FOR THE DISTRICT OF INDIANA.

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[Gideon, Print.]

Pleas of the circuit court of the United States, for the seventh judicial circuit and district of Indiana, begun and holden at Indianapolis, in said district, before the honorable John McLean, one of the justices of the Supreme Court of the United States, and the honorable Elisha M. Huntington, district judge of the United States, for the the district of Indiana, on the twenty-ninth day of May, in the year of our Lord one thousand eight hundred and forty-eight.

JOHN DOE ex dem. PHINEAS O. SARGEANT et al.
vs.
THE STATE BANK OF INDIANA.

Trespass and ejectment.

Be it remembered, that heretofore, to wit, on the seventeenth day of November, A. D. eighteen hundred and forty-six, the plaintiff, by Oliver H. Smith, esq., his attorney, comes and files in the clerk's office of said court his certain declaration in writing, which is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
District of Indiana.

In the circuit court of the United States.

John Doe complains of Richard Roe, in a plea of trespass and ejectment, for that Phineas O. Sargeant, Nabby Sargeant, Jabez Sargeant, and Benjamin B. Sargeant, heirs-at-law of Samuel Sargeant, deceased, resident citizens of the State of Vermont, on the first day of January, A. D. eighteen hundred and forty, at the State of Indiana, had demised to the said John Doe the following lands and tenements, situated, lying, and being in the county of Tippecanoe, in the State and district of Indiana, that is to say, the following tract of land, situated and lying east of and adjoining the town of Lafayette, county of Tippecanoe, and State of Indiana, eighty rods in length from north to south, and thence east so far as to include ten acres of land, and the following tract or lots of land, situate, lying, and being in the town of Lafayette and State of Indiana, and known and designated as lots numbered on the original plat of said town, two four, six, eight, ten, twelve, fourteen, sixteen, eighteen, twenty, twenty-two, twenty-four, twenty-six, twenty-eight, thirty, thirty-two, thirty-four, thirty-six, thirty-eight, forty, forty-two, forty-four, forty-six, forty-eight, fifty, fifty-two, fifty-four, fifty-six, fifty-eight, sixty, sixty-two, sixty-four, sixty-six, sixty-eight, seventy, seventy-two, seventy-four, seventy-six, seventy-eight, eighty, eighty-two, eighty-four, eighty-six, eighty-eight, ninety, ninety-two, ninety-four, ninety-six, ninety-eight, one hundred, one hundred and two, one hundred and four, one hundred and six, one hundred and

eight, one hundred and ten, one hundred and twelve, one hundred and fourteen, one hundred and sixteen, one hundred and eighteen, one hundred and twenty, one hundred and twenty-two, one hundred and twenty-four, one hundred and twenty-six, one hundred and twenty-eight, one hundred and thirty, one hundred and thirty-two, one hundred and thirty-four, one hundred and thirty-six, one hundred and thirty-eight, one hundred and forty, with the appurtenances, of the value of fifty thousand dollars; lots numbered fifty-eight, sixty, sixty-two, and sixty-four, being sixty-three feet front on the street, and running back to an alley; and all other lots being sixty-two feet front on the street, and running back to the alley; and also six feet front of land adjoining on each side of each of said lots, running back with said lots, in parallel lines, to an alley, of the value of five hundred dollars each.

To have and to hold the same to the said John Doe, from said day, for and during the term of thirty years then next ensuing, and fully to be completed.

And also that Phineas O. Sargeant, Nabby Sargeant, and Benjamin B. Sargeant, resident citizens of the State of Vermont, on the first day of January, A. D. eighteen hundred and forty, at the State of Indiana, had demised to the said John Doe the following lands and tenements, with the appurtenances, situated, lying, and being in the county of Tippecanoe, in the State of Indiana, that is to say, the following tract of land, situated and lying east of and adjoining the town of Lafayette, county of Tippecanoe, and State of Indiana, eighty rods in length from north to south, and thence east so far as to include ten acres of land; and the following tracts or lots of land, situate, lying, and being in the town of Lafayette, and State of Indiana, and known and described as lots numbered on the original plat of said town two, four, six, eight, ten, twelve, fourteen, sixteen, eighteen, twenty, twenty-two, twenty-four, twenty-six, twenty-eight, thirty, thirty-two, thirty-four, thirty-six, thirty-eight, forty, forty-two, forty-four, forty-six, forty-eight, fifty, fifty-two, fifty-four, fifty-six, fifty-eight, sixty, sixty-two, sixty-four, sixty-six, sixty-eight, seventy, seventy-two, seventy-four, seventy-six, seventy-eight, eighty, eighty-two, eighty-four, eighty-six, eighty-eight, ninety, ninety-two, ninety-four, ninety-six, ninety-eight, one hundred, one hundred and two, one hundred and four, one hundred and six, one hundred and eight, one hundred and ten, one hundred and twelve, one hundred and fourteen, one hundred and sixteen, one hundred and eighteen, one hundred and twenty, one hundred and twenty-two, one hundred and twenty-four, one hundred and twenty-six, one hundred and twenty-eight, one hundred and thirty, one hundred and thirty-two, one hundred and thirty-four, one hundred and thirty-six, one hundred and thirty-eight, and one hundred and forty, with the appurtenances, of the value of fifty thousand dollars.

To have and to hold the same to the said John Doe, from said day, for and during the term of thirty years then next ensuing, and fully to be completed.

And for that also Nabby Sargeant, a resident citizen of the State of Vermont, on the first day of January, A. D. eighteen hundred and forty, at the State of Indiana, had demised to said John Doe the following lands and tenements, with the appurtenances, situated, lying, and being in the county of Tippecanoe, in the State of Indiana, that is to say, the following tract of land, situated and lying east of and adjoining the town of Lafayette, county of Tippecanoe, and State of Indiana, eighty rods in length from north to south, and thence east so far as to include ten acres of land; and the following tracts or lots of land, situated, lying, and being in the town of Lafayette, and State of Indiana, and described as lots numbered on the original plat of said town two, four, six, eight, ten, twelve, fourteen, sixteen, eighteen, twenty, twenty-two, twenty-four, twenty six, twenty-eight, thirty, thirty-two; thirty-four, thirty-six, thirty-eight, forty, forty-two, forty-four, forty-six, forty-eight, fifty, fifty-two, fifty-four, fifty-six, fifty-eight, sixty, sixty-two, sixty-four, sixty-six, sixty-eight, seventy, seventy-two, seventy-four, seventy-six, seventy-eight, eighty, eighty-two, eighty-four, eighty-six, eighty-eight, ninety, ninety-two, ninety-four, ninety-six, ninety-eight, one hundred, one hundred and two, one hundred and four, one hundred and six, one hundred and eight, one hundred and ten, one hundred and twelve, one hundred and fourteen, one hundred and sixteen, one hundred and eighteen, one hundred and twenty, one hundred and twenty-two, one hundred and twenty-four, one hundred and twenty-six, one hundred and twenty-eight, one hundred and thirty, one hundred and thirty-two, one hundred and thirty-four, one hundred and thirty-six, one hundred and thirty-eight, one hundred and forty, with the appurtenances, of the value of fifty thousand dollars.

To have and to hold the same to the said John Doe, from said day, for and during the term of thirty years then next ensuing, and fully to be completed.

And for that, also, Phineas O. Sargeant, a resident citizen of the State of Vermont, on the first day of January, A. D. eighteen hundred and forty, at the State of Indiana, had demised to said John Doe the following land and tenements, with the appurtenances, situated, lying, and being in the county of Tippecanoe, in the State of Indiana, that is to say, the following tract of land, situated and lying east of and adjoining the town of Lafayette, county of Tippecanoe, and State of Indiana, eighty rods in length from north to south, and thence east, so far as to include ten acres of land; and the following tracts or lots of land, situated, lying, and being in the town of Lafayette, and State of Indiana, and known and described as lots numbered on the original plat of said town two, four, six, eight, ten, twelve, fourteen, sixteen, eighteen, twenty, twenty-two, twenty-four, twenty-six, twenty-eight, thirty, thirty-two, thirty-four, thirty six, thirty-eight, forty, forty-two, forty-four, forty-six, forty-eight, fifty, fifty-two, fifty-four, fifty-six, fifty-eight, sixty, sixty-two, sixty-four, sixty-six, sixty-eight, seventy, seventy-two, seventy-four, seventy-six, seventy-eight, eighty, eighty-two, eighty-four, eighty-six, eighty-eight, ninety, ninety-two, ninety-

four, ninety-six, ninety-eight, one hundred, one hundred and two, one hundred and four, one hundred and six, one hundred and eight, one hundred and ten, one hundred and twelve, one hundred and fourteen, one hundred and sixteen, one hundred and eighteen, one hundred and twenty, one hundred and twenty-two, one hundred and twenty-four, one hundred and twenty-six, one hundred and twenty-eight, one hundred and thirty, one hundred and thirty-two, one hundred and thirty-four, one hundred and thirty-six, one hundred and thirty-eight, one hundred and forty, with the appurtenances, of the value of fifty thousand dollars. To have and to hold the same to the said John Doe, from said day, for and during the term of thirty years then next ensuing, and fully to be completed.

And also for that Benjamin B. Sargeant, a resident citizen of the State of Vermont, on the first day of January, A. D. eighteen hundred and forty, at the State of Indiana, had demised to said John Doe the following lands and tenements, with the appurtenances, situate, lying, and being in the county of Tippecanoe, in the State of Indiana, that is to say, the following tract of land, situated and lying east of and adjoining the town of Lafayette, county of Tippecanoe, and State of Indiana, eighty rods in length from north to south, and thence east so far as to include ten acres of land; and the following tracts or lots of land, situated, lying, and being in the town of Lafayette, and State of Indiana, and known and described as lots numbered on the original plat of said town two, four, six, eight, ten, twelve, fourteen, sixteen, eighteen, twenty, twenty-two, twenty-four, twenty-six, twenty-eight, thirty, thirty-two, thirty-four, thirty-six, thirty-eight, forty, forty-two, forty-four, forty-six, forty-eight, fifty, fifty-two, fifty-four, fifty-six, fifty-eight, sixty, sixty-two, sixty-four, sixty-six, sixty-eight, seventy, seventy-two, seventy-four, seventy-six, seventy-eight, eighty, eighty-two, eighty-four, eighty-six, eighty-eight, ninety, ninety-two, ninety-four, ninety-six, ninety-eight, one hundred, one hundred and two, one hundred and four, one hundred and six, one hundred and eight, one hundred and ten, one hundred and twelve, one hundred and fourteen, one hundred and sixteen, one hundred and eighteen, one hundred and twenty, one hundred and twenty-two, one hundred and twenty-four, one hundred and twenty-six, one hundred and twenty-eight, one hundred and thirty, one hundred and thirty-two, one hundred and thirty-four, one hundred and thirty-six, one hundred and thirty-eight, one hundred and forty, with the appurtenances, of the value of fifty thousand dollars. To have and to hold the same to the said John Doe, from said day, for and during the term of thirty years then next ensuing, and fully to be completed.

And also for that Jabez Sargeant, a resident citizen of the State of Vermont, on the first day of January, A. D. eighteen hundred and forty, at the State of Indiana, had demised to the said John Doe the following lands and tenements, with their appurtenances, situated, lying, and being in the county of Tippecanoe, in the State of Indiana; that is to say, the following tract of land, situated and lying east of and

adjoining the town of Lafayette, county of Tippecanoe, and State of Indiana, eighty rods in length from north to south, and thence east so far as to include ten acres of land; and the following tracts or lots of land, situated, lying, and being in the town of Lafayette, and State of Indiana, and known and described as lots numbered on the original plat of said town two, four, six, eight, ten, twelve, fourteen, sixteen, eighteen, twenty, twenty-two, twenty-four, twenty-six, twenty-eight, thirty, thirty-two, thirty-four, thirty-six, thirty-eight, forty, forty-two, forty-four, forty-six, forty-eight, fifty, fifty-two, fifty-four, fifty-six, fifty-eight, sixty, sixty-two, sixty-four, sixty-six, sixty-eight, seventy, seventy-two, seventy-four, seventy-six, seventy-eight, eighty, eighty-two, eighty-four, eighty-six, eighty-eight, ninety, ninety-two, ninety-four, ninety-six, ninety-eight, one hundred, one hundred and two, one hundred and four, one hundred and six, one hundred and eight, one hundred and ten, one hundred and twelve, one hundred and fourteen, one hundred and sixteen, one hundred and eighteen, one hundred and twenty, one hundred and twenty-two, one hundred and twenty-four, one hundred and twenty-six, one hundred and twenty-eight, one hundred and thirty, one hundred and thirty-two, one hundred and thirty-four, one hundred and thirty-six, one hundred and thirty-eight, one hundred and forty, with the appurtenances, of the value of fifty thousand dollars: To have and to hold the same to the said John Doe, from said day, for and during the term of thirty years then next ensuing, and fully to be completed; by virtue of which several demises the said John Doe entered into the said tenements, with the appurtenances, and was lawfully possessed thereof for the term aforesaid.

And the said John Doe being so thereof possessed, the said Richard Roe afterwards, to wit, on the first day of January, A. D. eighteen hundred and forty-one, with force and arms, entered into the said lands, lots, and tenements, with the appurtenances, and ejected the said John Doe therefrom, and other wrongs to the said John Doe then and there did, to his damages one thousand dollars; hence he sues, &c.

O. H. SMITH,
For plaintiffs.

To the branch at Lafayette of the State Bank of Indiana.

You will take notice, that I am informed that you are in possession of, or claim title to, the premises in this declaration mentioned, or to some part thereof; and I being sued in the action as casual ejector, and having no title to said lots, premises, and tenements, advise you to appear at the next term of the circuit court of the United States, for the district of Indiana, to be holden on the third Monday in November next, and make yourself a defendant in my stead; otherwise judgment will then be entered against you by default, and you will be turned out of possession.

RICHARD ROE.

October 8th, 1846.

On which declaration was endorsed the following, to wit: "I served the above notice by delivering to Cyrus Ball, cashier of the branch of the State Bank of Indiana, at Lafayette, a true copy of the aforesaid declaration and notice thereto attached, and also to Joseph S. Hanna, president of the said branch at Lafayette.

A. C. PEPPER,
Marshal, U. S. D. Indiana.
By JACOB WALKER, *Deputy.*

And afterwards, to wit, at the circuit court of the United States, for the circuit and district aforesaid, begun and holden at Indianapolis aforesaid, before the honorable Elisha M. Huntington, district judge of the United States, for the 7th circuit and district of Indiana, on the aforesaid seventeenth day of November, eighteen hundred and forty-six, come the parties, and by agreement, this cause is continued until the next term of this court.

And afterwards, to wit, at a circuit court of the United States, for the circuit and district aforesaid, begun and holden at Indianapolis aforesaid, before the honorable John McLean, one of the associate judges of the Supreme Court of the United States, and the honorable Elisha M. Huntington, district judge of the United States, for the district of Indiana, on the twenty-sixth day of May, A. D. eighteen hundred and forty-seven, comes the said plaintiff, by his attorney, O. H. Smith, esq.; and the said Branch Bank also comes, by her attorneys, A. S. White and Baird, and ask the court to be made defendant herein instead of the now defendant Richard Roe; and leave is granted, and the said Branch Bank is made defendant herein; and thereupon files her consent rule, which is in the words and figures following, to wit:

In the United States circuit court, for the seventh circuit and district of Indiana.

JOHN DOE, ex dem. of Samuel Sargeant, deceased,
vs.
RICHARD ROE.

It is ordered by the court, by the consent of the attorneys for both parties, that the State Bank of Indiana, who claims title to the following described premises, parcel of the premises described in the declaration in ejectment filed in the above entitled case, to wit: lot number (90) ninety, in the original plat of the town of Lafayette, and the east half of lot (132) one hundred and thirty-two, in the said plat of said town, all in the county of Tippecanoe, and State of Indiana; each of which said lots fronts (66) sixty-six feet on the street, and for which she intends to defend this action of ejectment, may be admitted defendant instead of the now defendant Richard Roe; that the said defendant shall forthwith appear, by her attorneys, and receive a declaration in ejectment for the above described premises, and plead thereto the general issue; and at the trial thereupon to be had, confess lease, entry, ouster; and that she was, at the time of the service of the declaration

in ejectment, in possession of the premises above mentioned and described, and insist upon the title only; otherwise let judgment be entered for the plaintiff against the now defendant by default.

O. H. SMITH,
Att'y for plaintiff.
A. S. WHITE,
Z. BAIRD,
Attorneys for deft.

And the said defendant, by her attorneys, for a plea in this behalf saith, that she is not guilty of the supposed trespasses and ejectments above laid to her charge, in manner and form as the said John Doe hath thereof above complained against her; and of this she puts herself upon the country, &c.

A. S. WHITE & Z. BAIRD,
Attorneys for defendant.

And the plaintiff doth the like by O. H. Smith, esq., his attorney.

And thereupon this cause is continued on motion until the next term of this court.

And afterwards, to wit, at a circuit court of the United States, for the circuit and district aforesaid, begun and holden at Indianapolis aforesaid, before the honorable Elisha M. Huntington, district judge of the United States, for the district of Indiana, on the twenty-third day of November, in the year of our Lord one thousand eight hundred and forty-seven, came the parties, by their said attorneys, and by their agreement this cause is continued until the next term of this court.

And afterwards, to wit, at a circuit court of the United States, for the circuit and district aforesaid, begun and holden at Indianapolis aforesaid, before the honorable John McLean, one of the associate justices of the Supreme Court of the United States, and the honorable Elisha M. Huntington, district judge of the United States, for the district of Indiana, on the twenty-third day of May, in the year of our Lord one thousand eight hundred and forty-eight, being the ninth judicial day of the May term of said court, comes the plaintiff by Smith and Lockwood, esqrs., his attorneys, and the defendant by her attorneys, White and Baird, comes also, and issue being joined, here now comes a jury, to wit:

Hugh Ferry, Daniel P. Faust, Otho Gapin, J. D. Cassett, Johnson Watts, D. S. Gooding, Joseph Halman, Richard Winchell, Barcley Burrows, John B. Campbell, A. D. Hockett, and J. B. Crawford, twelve good and lawful men of the district of Indiana, who are elected, tried, and sworn, well and truly to try the issue joined, and a true verdict give according to the evidence; and after hearing the evidence, argument of counsel, and charge of the court, the jury aforesaid, on the twenty-ninth day of May, A. D. eighteen hundred and forty-eight, that being the fifteenth judicial day of the term aforesaid, return to the court the following verdict, to wit:

"We, the jury, find the defendant not guilty."

It is therefore considered by the court now here, that said defendant go hence and recover of the lessors of the plaintiff her costs and charges by her about this suit in this behalf laid out and expended, taxed at dollars and cents.

During the trial of the above cause, the following bill of exceptions was taken and filed to the opinion of the court, to wit:

Be it remembered, that, on the trial of the above cause before the court and a jury, the plaintiff having given in evidence the patent from the United States to William Digby for the fractional quarter section of land upon which the town of Lafayette is located; a deed from William Digby, the patentee, to Samuel Sargeant, of the date of May twenty-seventh, A. D. eighteen hundred and twenty-five, for so much of the fraction as includes the town of Lafayette and the lots in controversy; that Samuel Sargeant died the last of July, A. D. eighteen hundred and twenty-six, and that the lessors were his heirs at law; and having proved that the property in controversy in this suit was of a value over ($6,000) six thousand dollars, the plaintiff rested.

The defendant then gave in evidence the following certificate, to wit:

THE STATE OF INDIANA,
Tippecanoe county, ss:

I, Mark Jones, clerk of the Tippecanoe circuit court, in the State of Indiana, do hereby certify, that the following named persons, to wit: William Bush, Levi Thornton, Stephen Kennedy, and John Russell, were, on Saturday, the eighth day of July, A. D. eighteen hundred and twenty-six, and at and during the time of the sitting of the board of justices of Tippecanoe county, on that day acting justices of the peace, in and for the county of Tippecanoe, in the State of Indiana, duly elected, commissioned, and qualified, and as such their official acts are entitled to full faith and credit.

In testimony whereof I have hereunto set my hand and affixed the [SEAL.] seal of said court at my office, in Lafayette, on the tenth day of May, A. D. eighteen hundred and forty-eight.

MARK JONES, *Clerk.*

Also the following record of the board of justices of Tippecanoe county, Indiana, by the production of the original record book, having proved the same, to wit:

Be it remembered, that at a session of the Tippecanoe county board of justices, held at the house of James Brackman, the place appointed for holding courts within and for said county of Tippecanoe, at the hour of twelve o'clock, on Saturday, the eighth day of July, in the year of our Lord one thousand eight hundred and twenty-six: Present, William Bush, Levi Thornton, Stephen Kennedy, and John Russell, who now present their commissions from his excellency J. Brown Ray, governor of the State of Indiana, and having the several oaths endorsed thereon, now take an

additional oath of office, not to violate the provisions of the fourteenth section of an act entitled an act establishing a county treasurer; whereupon the board now proceed to organize themselves, by selecting from their own body, by ballot, a president of said board; and after counting out the tickets, it appears that William Bush received three votes, which being a majority of all the votes given, the said William Bush is declared duly elected president of the board, and takes his seat as such; whereupon the board proceed to business.

The board receive the returns from the commissioners appointed to locate the county seat of the county of Tippecanoe, said commissioners locating the seat of justice at the town of Lafayette, and received the donations from the following persons, viz: A bond from Reuben Kelsey, for a warranty deed for ten acres of land off of the northeast corner of the east half of the northeast quarter of section twenty-nine, range four west, township twenty-three; a bond from Robert Alexander, for a warranty deed for ten acres of land off of the north end of the west half of the northeast quarter of section number twenty-nine, township twenty-three north, of range number four west. A bond from Samuel Sargeant, for warranty deed for ten acres of land, east and adjoining the town plat of the town of Lafayette; a bond from J. C. Elston, Samuel Sargeant, John Wilson, and Jonathan W. Powers, for a warranty deed for all the even number of lots in the town of Lafayette, as laid down. Ordered, that the agent of the county is authorized to advertise the sale of county lots, in the town of Lafayette, to sell on the second Monday of October next; terms of sale, one-fourth the purchase money to be paid in hand, the balance in two equal annual payments. "Be it remembered, that Reuben Kelsey is appointed agent of the county of Tippecanoe, by order of the board;" and also proved that the said entry in said original record was in the proper handwriting of the said Samuel Sergeant, who was then the clerk of the said board, and proved by Lawrence B. Stockton that he was present at said session of said board, and saw said Samuel Sargeant entering the minutes in said record book.

The said defendant also gave in evidence the following report of the commissioners appointed to locate the seat of justice of said county of Tippecanoe, to wit:

"We, the undersigned commissioners, appointed by an act of the legislature, entitled 'an act for the formation of the county of Tippecanoe', approved January twentieth, A. D. eighteen hundred and twenty-six, having met at the house of James Brackman in said county on the first Monday of May, as directed in the act aforesaid, and after having taken the necessary oaths prescribed by law, proceeded to discharge the duties enjoined by the act aforesaid agreeably to the provisions of the act entitled 'an act establishing seats of justice in new counties,' approved January fourteenth, A. D. eighteen hundred and twenty-four, and the acts amendatory thereto; and after having examined said county, and viewed the different sites proposed as seats of justice of said county, we, the said undersigned commissioners, do hereby establish the seat of justice of the said county of Tippecanoe in and at the town

of Lafayette, situate on the southeast side of the river Wabash, on the south fraction of the southeast quarter of section twenty, in town. twenty-three north, range four west, and have received as donations from the proprietors and others, for the benefit of said county, the following described property, viz: All the even numbered lots in said town, as numbered on the plan of said town, amounting in all to seventy, for which a title bond is herewith transmitted, together with a plan of said town, as recorded in the recorder's office, Crawfordsville, reserving for the use of a county library ten per centum on all future sales of lots by the proprietors, for which per centum bond is herewith submitted; and also title bonds for thirty acres of land adjoining and in the vicinity of Lafayette, together with promissory notes for the sum of one hundred and ninety-two dollars, and the liquidated accounts of the commissioners, amounting to one hundred and eight dollars. And inasmuch as a board of justices for the county of Tippecanoe is not yet organized, we, the commissioners, authorize Samuel Milroy, one of our board, to deliver this report, and all the documents herein referred *two*, to the board of justices of said county when organized.

"Given under our hands and seals this fourth day of May, A. D. eighteen hundred and twenty-six.

"All of which is respectfully submitted.

"SAMUEL MILROY, [SEAL.]
"THOMAS J. MATLOCK, [SEAL.]
"EBENEZER PADDOCK, [SEAL.]
"JOHN BLAIR." [SEAL.]

Having first proved by Samuel Hoover, who was clerk of the Tippecanoe circuit court, and ex officio clerk of the said board of justices, from the time of the death of said Samuel Sargeant until the year eighteen hundred and forty, that he received the same to bring to this court, at the office of the clerk of said Tippecanoe circuit court, from Mark James, the present clerk thereof; and also that said report was in his, said Hoover's, care and office as clerk of said board of justices, as an office paper, during all his incumbency, from the year eighteen hundred and twenty-six to eighteen hundred and forty as aforesaid; and that he found the same on his coming into office on the files in a parcel with some circuit court papers; and that always before, and until the creation of the auditor's office in A. D. eighteen hundred and forty-one, the papers and records of the two offices of the circuit court, and of the board of justices, or county commissioners of said Tippecanoe county, were kept by the clerk in the same room, and not in distinct apartments. The defendant also proved by the auditor of Tippecanoe county that the paper containing said report had not been transferred to his office since the creation of the auditor's office.

The defendant also proved by Jonathan W. Powers that he, the witness, and said Sam'l Sargeant, were present in a room at Lafayette with said locating commissioners while they were deliberating on, and deciding the question of, locating said seat of justice, and that the necessary papers were then and there executed, and handed by the said locating commissioners to Samuel Milroy, one of their number, to be by him de-

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livered to said board of justices when they should be organized; but that his memory does not enable him to particularize said report as being one of the identical papers so handed over; nor can he now testify that he saw the said commissioners sign the same, but that he was present with said locating commissioners until they separated, and one of them rode home with the witness to an adjoining county. The said defendant then having proved the execution of the following title bond, to wit:

Know all men by these presents, that we, Isaac C. Elston, Samuel Sargeant, John Wilson, and Jonathan W. Powers, of the counties of Montgomery and Tippecanoe, in the State of Indiana, are held and firmly bound unto the board of justices of Tippecanoe county, that may hereafter be organized, and their successors in office, in the penal sum of ten thousand dollars, current money of the United States; to the payment of which we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this fourth day of May, A. D. eighteen hundred and twenty-six.

The condition of this obligation is such, that if the above bounden Isaac C. Elston, Samuel Sargeant, John Wilson, Jonathan W. Powers, shall well and truly convey, or cause to be conveyed, unto the above mentioned board of justices, by way of general warranty deed, all the following numbered lots in the town of Lafayette, and county of Tippecanoe, and State of Indiana, on or before the first day of October next, viz: All the even numbered lots in said town, commencing at number two, and so on, as follows; that is to say, No. two, four, six, eight, ten, twelve, fourteen, sixteen, eighteen, twenty, twenty-two, twenty-four, twenty-six, twenty-eight, thirty, thirty-two, thirty-four, thirty-six, thirty-eight, forty, forty-two, forty-four, forty-six, forty-eight, fifty, fifty-two, fifty-four, fifty-six, fifty-eight, sixty, sixty-two, sixty-four, sixty-six, sixty-eight, seventy, seventy-two, seventy-four, seventy-six, seventy-eight, eighty, eighty-two, eighty-four, eighty-six, eighty eight, ninety, ninety-two, ninety-four, ninety-six, ninety-eight, one hundred, one hundred and two, one hundred and four, one hundred and six, one hundred and eight, one hundred and ten, one hundred and twelve, one hundred and fourteen, one hundred and sixteen, one hundred and eighteen, one hundred and twenty, one hundred and twenty two, one hundred and twenty-four, one hundred and twenty-six, one hundred and twenty-eight, one hundred and thirty, one hundred and thirty-two, one hundred and thirty-four, one hundred and thirty-six, one hundred [and] thirty-eight, one hundred and forty, then, and in that case, the above obligation to be void and of no effect; otherwise to remain in full force and virtue in law and equity.

J. C. ELSTON, [SEAL.]
SAMUEL SARGEANT, [SEAL.]
JOHN WILSON, [SEAL.]
By WILLIAM CRAWFORD,
JONATHAN W. POWERS. [SEAL.]

Attest: JAMES BLAIR.

Endorsed as follows: James C. Elston, John Wilson, J. W. Powers, and Samuel Sargeant.

Bond. J. C. Elston and wife, John Wilson and wife, J. W. Powers and wife, executed their deed in pursuance of the within bond, second June, eighteen hundred and twenty-seven.

Attest: P. M. CURRY.

Filed in clerk's office, seventh November, eighteen hundred and twenty-seven.

S. HOOVER, *Clerk*.

Recorded, page 48.

S. HOOVER, *Clerk*.

And having proved by the said Jonathan W. Powers, one of the obligors in said title bond, that the same was executed at the time and place when and where said locating commissioners were deliberating as aforesaid, and was made in consideration of the adoption, by said commissioners of Lafayette, as the seat of justice of said county of Tippecanoe, and then and there handed to said commissioners; and having made, by Samuel Hoover aforesaid, the same proof in regard to said bond as is above stated to have been made by him in regard to said locating commissioners' report, the said defendant thereupon offered said bond in evidence, to which the said plaintiff then and there objected, on the ground assumed by him that, at the time the same was executed and delivered by Samuel Sargeant to the commissioners to locate the county seat of Tippecanoe county, there was no obligee in esse, the board of county justices not having been organized until the eighth day of July, A. D. eighteen hundred and twenty-six.

The said defendant also then and there offered in evidence the following authenticated copy of a record of the Tippecanoe circuit court, to wit:

Pleas before the honorable John R. Porter, president judge of the first judicial circuit in the State of Indiana, and James Wylie and John Provalt, esqs., associate judges for the county of Tippecanoe, within said circuit, at Lafayette, within and for said term of May, one thousand eight hundred and twenty-eight, to wit:

THE BOARD OF JUSTICES of Tippecanoe county
vs.
THE HEIRS OF SAMUEL SARGEANT, deceased.

Application to convey real estate, &c.

Be it remembered, that at a term of the Tippecanoe circuit court, begun and holden at the court-house, in the town of Lafayette, on the first Monday in November, one thousand eight hundred and twenty-

seven, and on Wednesday, the third judicial day of the same, before the honorable John R. Porter, president judge, and James Wylie and John Provalt, esqs., associate judges of said court, came into court Peter Hughs, agent for the county of Tippecanoe, by Curry, his attorney, and moves the court now here to appoint a commissioner to convey real estate under and in conformity to a title bond given by Samuel Sargeant, (deceased,) and others therein named, in his lifetime, to the board of justices of Tippecanoe county and their successors in office; which bond he now here files for the conveyance of certain town lots in the town of Lafayette, in said bond mentioned and numbered. Also files a bond given by the said Samuel Sargeant, deceased, by himself, for the conveyance of ten acres of land east and adjoining said town of Lafayette, to the board of justices of said county or their successors in office. And it appearing to the satisfaction of the court now here, that proper and legal notices have been given of this motion, it is therefore, by the court now here, ordered that Richard Johnson be appointed commissioner to convey, by good and sufficient deed, unto the board of justices of Tippecanoe county, or their successors in office, said lots or parcels of ground in pursuance of the aforesaid bonds, in fee simple for and on behalf of the heirs of the said Samuel Sargeant, deceased.

And afterwards, to wit, at a term of the Tippecanoe circuit court, begun and holden at the court-house, in the town of Lafayette, on the first Monday in May, in the year of our Lord one thousand eight hundred and twenty-eight, before the aforesaid judges thereof, on Monday, the first judicial day thereof, Richard Johnson, heretofore appointed by this court at their November term, one thousand eight hundred and twenty-seven, commissioner to convey certain real estate in conformity to a title bond executed by Samuel Sargeant and others to the board of justices of Tippecanoe county, for all the even numbered lots in the town of Lafayette, the fourth day of May, eighteen hundred and twenty-six; also another bond executed by the said Samuel Sargeant to the board of justices of Tippecanoe county, for the conveyance of ten acres of land for and on behalf of the heirs of the said Samuel Sargeant, deceased, now reports and presents to this court the deeds by him executed and acknowledged, with the original bonds, and his report in this behalf, which was by the court examined and inspected, and afterwards confirmed, and was ordered to be recorded on the records of this court.

The report is in these words, to wit:

STATE OF INDIANA, *Tippecanoe county.*

Tippecanoe circuit court, November term, one thousand eight hundred and twenty-seven; on Wednesday, the third judicial day, November the seventh, one thousand eight hundred and twenty-seven, came into court Peter Hughes, agent for the county of Tippecanoe, by Curry, his attorney, and moves the court now here to appoint a commissioner to convey real estate under and in conformity to a title bond given by Samuel Sargeant, (deceased,) and others therein named, in his lifetime, to the board of justices of Tippecanoe county, and their successors in

office, which bond he now here files for the conveyance of certain town lots in the town of Lafayette, in said bond mentioned and numbered; also files a bond given by the said Samuel Sargeant, (deceased,) by himself, for the conveyance of ten acres of land east and adjoining said town of Lafayette, to the board of justices of said county, or their successors in office. And it appearing to the satisfaction of the court now here, that proper and legal notices have been given of this motion, it is therefore, by the court now here, ordered that Richard Johnson be appointed commissioner to convey by good and sufficient deed unto the board of justices of Tippecanoe county, or their successors in office, said lots and parcels of ground in pursuance of the aforesaid bonds, in fee simple, for and on behalf of the heirs of the said Samuel Sargeant, deceased.

A true copy. Attest:

SAMUEL HOOVER, *Clerk.*

STATE OF INDIANA,
Tippecanoe county.

I, Richard Johnson, in obedience to the above order of the judges of the Tippecanoe circuit court, at their November term, one thousand eight hundred and twenty-seven, do hereby make known, that on the fifth day of April, one thousand eight hundred and twenty-eight, I did execute a deed of conveyance, in conformity to a title bond executed by Isaac C. Elston, Jonathan W. Powers, John Wilson, and Samuel Sargeant, to the board of justices of Tippecanoe county, and their successors in office, dated the fourth day of May, one thousand eight hundred and twenty-six, for the conveyance of all the even numbered lots in the town of Lafayette, in said county of Tippecanoe, for and on behalf of the heirs of the said Samuel Sargeant, deceased. Also, on the same day, I executed a deed of conveyance in conformity to a title bond executed by Samuel Sargeant, to the board of justices of Tippecanoe county and their successors in office, dated the fourth day of May, one thousand eight hundred and twenty-six, for the conveyance of ten acres of land, lying east and adjoining the town of Lafayette, in said county of Tippecanoe, for and on behalf of the heirs of the said Samuel Sargeant, deceased; which deeds of conveyance, together with the original bonds, I herewith transmit agreeably to the statute in such cases made and provided. All of which is respectfully submitted.

Given under my hand and seal, at Lafayette, on the fifth day of April, anno domini one thousand eight hundred and twenty-eight.

RICHARD JOHNSON, [SEAL]
Commissioner.

Title bond for town lots in Lafayette, thus:

Know all men by these presents, that we, Isaac C. Elston, Samuel Sargeant, John Wilson, and Jonathan W. Powers, of the counties of Montgomery and Tippecanoe, in the State of Indiana, are held and firmly bound unto the board of justices of Tippecanoe county, that

may hereafter be organized, and their successors in office, in the penal sum of ten thousand dollars, current money of the United States; to the payment of which sum we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this fourth day of May, A. D. one thousand eight hundred and twenty six.

The condition of this obligation is such, that if the above bounden Isaac C. Elston, Samuel Sargeant, John Wilson, and Jonathan W. Powers, shall well and truly convey, or cause to be conveyed, unto the above mentioned board of justices, by way of general warranty deed, all the following numbered lots, in the town of Lafayette, and county of Tippecanoe, and State of Indiana, on or before the first day of October next, viz: All the even numbered lots in said town, commencing at number two, and so on, as follows, that is to say, number two, four, six, eight, ten, twelve, fourteen, sixteen, eighteen, twenty, twenty-two, twenty-four, twenty-six, twenty-eight, thirty, thirty-two, thirty-four, thirty-six, thirty-eight, forty, forty-two, forty-four, forty-six, forty-eight, fifty, fifty-two, fifty-four, fifty-six, fifty-eight, sixty, sixty-two, sixty-four, sixty-six, sixty-eight, seventy, seventy-two, seventy-four, seventy-six, seventy-eight, eighty, eighty-two, eighty-four, eighty-six, eighty-eight, ninety, ninety-two, ninety-four, ninety-six, ninety-eight, one hundred, one hundred and two, one hundred and four, one hundred and six, one hundred and eight, one hundred and ten, one hundred and twelve, one hundred and fourteen, one hundred and sixteen, one hundred and eighteen, one hundred and twenty, one hundred and twenty-two, one hnndred and twenty-four, one hundred and twenty-six, one hundred and twenty-eight, one hundred and thirty, one hundred and thirty-two, one hundred and thirty-four, one hundred and thirty-six, one hundred and thirty-eight, one hundred and forty; then and in that case the above obligation to be void and of no effect, otherwise to be and remain in full force and virtue in law and equity.

J. C. ELSTON, [SEAL.]
SAMUEL SARGEANT, [SEAL.]
JOHN WILSON, [SEAL.]
By WM. CRAWFORD,
JONATHAN W. POWERS. [SEAL.]

Attest: JAMES BLAIR.

Endorsed: J. C. Elston and wife, John Wilson and wife, J. W. Powers and wife, executed their deed in pursuance of the within bond, the second [of] June, A. D. eighteen hundred and twenty-seven.

Attest: P. M. CURRY.

The deed in pursuance of the above bond is thus, to wit:

This indenture, made this second day of June, in the year of our Lord one thousand eight hundred and twenty-seven, by and between Isaac C. Elston and Maria, his wife, John Wilson and Margaret, his wife, Jonathan W. Powers and Louisa, his wife, all of the county of

Montgomery, and State of Indiana; and Richard Johnson, commissioner appointed by the Tippecanoe circuit court to convey, for and in behalf of the heirs of Samuel Sargeant, deceased, of the first part, and the board of justices of the county of Tippecanoe, in the State of Indiana, of the second part, witnesseth: That whereas, byan act of the legislature of the State of Indiana, approved January twentieth, one thousand eight hundred and twenty-six, entitled "an act for the formation of a new county out of the county of Wabash, and for establishing the county seat thereof," it is enacted, that all that part of the county of Wabash contained within the boundaries therein specified and set forth, reference being thereunto had will more fully appear, shall form and constitute a new county, to be known and designated by the name of Tippecanoe; and whereas, by the second section of said recited act, commissioners were duly appointed for the purpose of fixing the permanent seat of justice of said new county of Tippecanoe, agreeably to an act entitled "an act for fixing the seats of justice in all new counties hereafter to be laid off," approved January the fourteenth, eighteen hundred and twenty-four; and the said commissioners having fixed and established the permanent seat of justice for said new county of Tippecanoe at the town of Lafayette, then laid off, on the southeast fraction of section twenty, in township number twenty-three north, of range No. four west, in the district of land sold at Crawfordsville, Indiana, and on the east bank of the Wabash river; and the said parties of the first part of these presents, being the owners and proprietors of the said town of Lafayette, in consideration of the seat of justice being established and fixed at the said town of Lafayette for said new county of Tippecanoe, did, on the fourth day of May, eighteen hundred and twenty-six, execute their certain bond payable to the board of justices of said new county of Tippecanoe when organized, and to their successors in office, in the penal sum of ten thousand dollars, conditioned that they, the said parties of the first part, their heirs, executors, and administrators should, on the first day of October then next after the date thereof, make, or cause to be made, executed, and delivered, a good and sufficient deed of general warrant to the said board of justices of said new county of Tippecanoe, and to their successors in office, for the benefit of said county of Tippecanoe, to every lot in the said town of Lafayette which is numbered even on the plat of said town.

Now, therefore, in consideration of the county seat of said county of Tippecanoe being by said commissioners located and established at the said town of Lafayette, in the county of Tippecanoe aforesaid, and State of Indiana, and of the cancelling and delivering up by the said party of the second part of these presents, to the parties of the first part, the aforesaid bond, the said Isaac C. Elston and Maria, his wife, John Wilson and Margaret, his wife, Jonathan W. Powers and Louisa, his wife, for themselves, and for their heirs, and the said Richard Johnson, commissioner as aforesaid, for and in behalf of the heirs of Samuel Sargeant, deceased, have granted, bargained, and sold, aliened, released, conveyed, and confirmed, and by these presents do grant, bargain, and sell, alien, release, con-

vey, and confirm, unto the said party of the second part, and to their successors in said office, for the use and benefit of said county of Tippecanoe, the following tracts or lots of land, situate, lying, and being in the town of Lafayette, county of Tippecanoe, and State of Indiana, and known and designated as lots numbered two, four, six, eight, ten, twelve, fourteen, sixteen, eighteen, twenty, twenty-two, twenty-four, twenty-six, twenty-eight, thirty, thirty-two, thirty-four, thirty-six, thirty-eight, forty, forty-two, forty-four, forty-six, forty-eight, fifty, fifty-two, fifty-four, fifty-six, fifty-eight, sixty, sixty-two, sixty-four, sixty-six, sixty-eight, seventy, seventy-two, seventy-four, seventy-six, seventy-eight, eighty, eighty-two, eighty-four, eighty-six, eighty-eight, ninety, ninety-two, ninety-four, ninety-six, ninety-eight, one hundred, one hundred and two, one hundred and four, one hundred and six, one hundred and eight, one hundred and ten, one hundred and twelve, one hundred and fourteen, one hundred and sixteeen, one hundred and eighteen, one hundred and twenty, one hundred and twenty-two, one hundred and twenty-four, one hundred and twenty-six, one hundred and twenty-eight, one hundred and thirty, one hundred and thirty-two, one hundred and thirty-four, one hundred and thirty-six, one hundred and thirty-eight, one hundred and forty: To have and to hold the said granted and bargained premises, with the privileges and appurtenances to the same belonging or in any wise appertaining, and all the estate, right, title, interest, property, possession, claim, and demand whatsoever, which the said party of the first part has either, in law or equity, of, in, and to the same, the said party of the second part, and to their successors in said office, or assigns forever, for the use aforesaid; and the said Isaac C. Elston and Maria, his wife, John Wilson and Margaret, his wife, Jonathan W. Powers and Louisa, his wife, do, for themselves, their heirs, executors, and administrators, and the said Richard Johnson, commissioner, for and in behalf of the heirs of Samuel Sargeant, deceased, do covenant and agree, to and with the said party of the second part, their successors, and assigns, that they are well seized of the premises above conveyed, as of a good, sure, perfect, absolute, and indefeasible estate of inheritance in the law and fee simple; that they, the said Isaac C. Elston and Maria, his wife, John Wilson and Magaret, his wife, Jonathan W. Powers and Louisa, his wife, and the said Richard Johnson, commissioner, for and in behalf of the heirs of Samuel Sargeant, deceased, have good right, full power, and lawful authority to sell and convey the same to the said party of the second part, and their successors in office, to hold as aforesaid; and that in the quiet and peaceable enjoyment of the said premises the said Isaac C. Elston and Maria, his wife, John Wilson and Margaret, his wife, Jonathan W. Powers and Louisa, his wife, for themselves, their heirs, executors, and administrators, and the said Richard Johnson, commissioner, for and in behalf of the heirs of Samuel Sargeant, deceased, will warrant and defend the said party of the second part and their successors and assigns forever, against the lawful claims and demands of all persons.

In witness whereof the said Isaac C. Elston and Maria, his wife, John Wilson and Margaret, his wife, Jonathan W. Powers and Louisa, his wife, have hereunto set our hands and seals.

ISAAC C. ELSTON, [SEAL.]
MARIA E. ELSTON, [SEAL.]
JOHN WILSON, [SEAL.]
MARGARET WILSON, [SEAL.]
JONATHAN W. POWERS, [SEAL.]
LOUISA POWERS, [SEAL.]
RICHARD JOHNSON. [SEAL.]

Signed, sealed, and delivered in the presence of—
P. M. CURRY.
Endorsed thus: "Acknowledgments, &c."

STATE OF INDIANA,
Montgomery county, sct.

Be it remembered, that on the second day of June, eighteen hundred and twenty-seven, before me, P. M. Curry, a justice of the peace in and for said county, personally came the above named Isaac C. Elston and Maria, his wife, Jonathan W. Powers and Louisa, his wife, and John Wilson and Margaret, his wife, who severally acknowledged the signing, sealing, and execution of the above and within deed of conveyance; and that the same is their proper act and deed; the said Maria E. Elston, wife of the said Isaac C. Elston, and the said Louisa, wife of the said Jonathan W. Powers, and the said Margaret, wife of the said John Wilson, being by me made acquainted with the nature and contents of the above and within writing, and by me severally examined separate and apart from their said husbands, acknowledged the same to be their own voluntary act and deed by them made, without the fear, persuasion, or coercion of their said husbands; all of which by me. from under my hand and seal the date above.

P. M. CURRY, [SEAL.]
Justice of the peace.

STATE OF INDIANA,
Tippecanoe county.

On this fifth day of May, eighteen hundred and twenty-eight, before the undersigned, president judge of the first judicial circuit, personally came Richard Johnson, the within named commissioner, and acknowledged the within deed to be his proper act and deed.

Given under my hand and seal at Tippecanoe county, in said circuit, date above.

JOHN R. PORTER. [SEAL.]

Bond given by Samuel Sargeant for the ten acres, is thus:

Know all men by these presents, that I, Samuel Sargeant, of the county of Tippecanoe, and State of Indiana, am held and firmly bound,

unto the board of justices of Tippecanoe (county,) which may hereafter be organized, in the penal sum of three hundred dollars; to the payment of which I bind myself, my heirs, executors, and administrators, jointly and severally, and firmly by these presents. Sealed with my seal, and dated this fourth day of May, in the year of our Lord one thousand eight hundred and twenty-six.

The condition of the above obligation is such, that if the above bounden Samuel Sargeant shall well and truly convey, or cause to be conveyed, unto the above named justices, or their successors in office, by way of general warranty deed, on or before the first day of October next, ten acres of land east and joining the town of Lafayette, eighty rods in length, north and south and east, so far as to include ten acres; then, and in that case, the above obligation to be void and of none effect; otherwise to remain in full force and virtue in law and equity.

SAMUEL SARGEANT. [SEAL.]

Deed thereon thus: This indenture, made this fifth day of April, in the year of our Lord one thousand eight hundred and twenty-eight, between Richard Johnson, of the county of Tippecanoe, and State of Indiana, pursuant, and by virtue of an order of the judges of the Tippecanoe circuit court, made and entered on the records of said court at the November term, one thousand eight hundred and twenty-seven, appointing him, the said Richard Johnson, commissioner, to convey certain real estate hereinafter mentioned, in conformity to a title bond executed by Samuel Sargeant to the board of justices of Tippecanoe county, or their successors in office, by way of general warranty deed, and bearing date the fourth day of May, one thousand eight hundred and twenty-six, to convey by a good and sufficient deed unto the board of justices of Tippecanoe county aforesaid, and their successors in office, certain real estate hereinafter to be mentioned and described, in pursuance of the aforesaid bond in fee simple, for and on behalf of the heirs of said Samuel Sargeant, deceased, of the first part, and the board of justices of the county of Tippecanoe, in the State of Indiana, of the second part, witnesseth:

That whereas, by an act of the legislature of the State of Indiana, approved January twentieth, one thousand eight hundred and twenty-six, entitled an act for the formation of a new county out of the county of Wabash, in said State, and for establishing the county seat thereof, it is enacted, that all that part of the county of Wabash, contained within the boundaries therein specified and set forth, reference being thereunto had will more fully appear, shall constitute a new county, to be known and designated by the name of Tippecanoe; and whereas by the second section of said act, commissioners were duly appointed for the purpose of fixing the permanent seat of justice of said new county of Tippecanoe, agreeably to an act entitled an act for fixing seats of justice in all new counties hereafter to be laid off, approved January fourteenth, eighteen hundred and twenty-four; and the said commissioners having fixed and established the permanent seat of justice for

said new county of Tippecanoe, at the town of Lafayette, then laid off on the southeast fraction of section twenty, in township number twenty-three north, of range number four west, in the district of lands sold at Crawfordsville, Indiana, and on the east bank of the Wabash river; and the said party of the first part of these presents being the owner and proprietor of ten acres of land lying east and adjoining the town of Layfette, eighty rods in length north and south, and thence so far as to include ten acres of land, in consideration of the seat of justice being established and fixed at the said town of Lafayette for said new county of Tippecanoe, did on the fourth day of May, one thousand eight hundred and twenty-six, execute a bond to and in favor of the board of justices of new county of Tippecanoe when organized, and their successors in office, in the penal sum of three hundred dollars, conditioned that he, the said party of the first part, his heirs, executors, administratrators, should, on or before the first day of October then next after the date hereof, make or cause to be made, to the board of justices of Tippecanoe county aforesaid, or to their successors in office, by way of general warranty deed, for the benefit of said county of Tippecanoe therefor, in consideration of the said county seat of the said county of Tippecanoe being by said commissioners located and established at the said town of Lafayette, in the county of Tippacanoe aforesaid, and the State of Indiana, and the cancelling and delivering up by the said party of the second part of these presents to the parties of the first part the aforesaid bond. The said Richard Johnson, commissioner, &c., appointed by the court aforesaid to convey, in conformity with said bond, for and on behalf of the heirs of the said Samuel Sargeant, deceased, for themselves, their heirs, &c., have granted, bargained, and sold, aliened, released, conveyed, and confirmed, and by these presents do grant, bargain, and sell, alien, release, convey, and confirm, unto the said party of the second part, and to their successors in said office, for the use and benefit of said county of Tippecanoe, the following tract of land, situated lying east of and adjoining the town of Lafayette, county of Tippecanoe, and State of Indiana, eighty rods in length from north to south, and thence east so far as to include ten acres of land; to have and to hold the said granted and bargained premises, with the privileges and appurtenances to the same belonging, or in anywise appertaining, and all the estate, right, title, interest, property, possession, claim, and demand whatsoever which the said party of the first part has, either in law or equity, of, in, and to the same, in the party of the second part, and to their successors in office, or assigns, forever, for the use aforesaid; and the said Richard Johnson, commissioner, &c., of the first part, doth covenant and agree, to and with the said party of the second part, their successors and assigns, that they are well seized of the premises above conveyed, as of a good, sure, perfect, absolute, and indefeasible estate of inheritance in the law and fee simple; that they have good right, full power, and lawful authority, to sell and convey the same to the said party of the second part, and their successors in said office, to hold as aforesaid; and

that in the quiet and peaceable enjoyment of the said premises the said Richard Johnson, commissioner, &c., for and in behalf of the heirs of the said Samuel Sargeant, deceased, will warrant and defend, unto the said party of the second part, and their successors and assigns, forever, against the lawful claim and demand of all persons.

In witness whereof I, Richard Johnson, commissioner, &c., as aforesaid, hereunto set my hand and seal, date first written above.

RICHARD JOHNSON. [SEAL.]

Acknowledged thus:

STATE OF INDIANA,
Tippecanoe county.

On this fifth day of May, eighteen hundred and twenty-eight, before the undersigned, president judge of the circuit court of the first judicial circuit in said State, personally came Richard Johnson, the within named commissioner and grantor, who acknowledged the within to be his proper act and deed.

Given under my hand and seal at Tippecanoe county, in said circuit; date above.

JOHN R. POTTER. [SEAL.]

STATE OF INDIANA,
Tippecanoe county, ss:

I, Mark Jones, clerk of the Tippecanoe circuit court, in the State of Indiana, do hereby certify the foregoing to be a true, full, perfect, and complete transcript of the record of the proceeding had in said cause in said court, as the same appears of record now remaining in my office.

In testimony whereof I have hereunto set my hand, and affixed the [L. S.] seal of said court at office in Lafayette, on this twenty-fifth day of March, A. D. eighteen hundred and forty-seven.

MARK JONES, *Clerk,*
By D. E. CRANE, *Deputy.*

To the production of which aforesaid record in evidence by the said defendant the said plaintiff then and there objected, upon the following grounds assumed by him, namely: The proceedings were coram non judice, and void; as the court had no jurisdiction of the person nor of the subject matter; the bond being void, the court had no jurisdiction to entertain proceedings upon it; the proceedings were between no parties known at the time to the law in Indiana. There was no legal notice of the proceeding; the preliminary steps were not taken to confer jurisdiction, and jurisdiction never attached; and at the time of making said objection, and before the said defendant had closed her evidence, the said plaintiff offered to produce in evidence to the court the following authenticated copy of a paper, to wit:

Notice.

The heirs and legal representatives of Samuel Sargeant, late of the

said new county of Tippecanoe, at the town of Lafayette, then laid off on the southeast fraction of section twenty, in township number twenty-three north, of range number four west, in the district of lands sold at Crawfordsville, Indiana, and on the east bank of the Wabash river; and the said party of the first part of these presents being the owner and proprietor of ten acres of land lying east and adjoining the town of Layfette, eighty rods in length north and south, and thence so far as to include ten acres of land, in consideration of the seat of justice being established and fixed at the said town of Lafayette for said new county of Tippecanoe, did on the fourth day of May, one thousand eight hundred and twenty-six, execute a bond to and in favor of the board of justices of new county of Tippecanoe when organized, and their successors in office, in the penal sum of three hundred dollars, conditioned that he, the said party of the first part, his heirs, executors, administrators, should, on or before the first day of October then next after the date hereof, make or cause to be made, to the board of justices of Tippecanoe county aforesaid, or to their successors in office, by way of general warranty deed, for the benefit of said county of Tippecanoe therefor, in consideration of the said county seat of the said county of Tippecanoe being by said commissioners located and established at the said town of Lafayette, in the county of Tippacanoe aforesaid, and the State of Indiana, and the cancelling and delivering up by the said party of the second part of these presents to the parties of the first part the aforesaid bond. The said Richard Johnson, commissioner, &c., appointed by the court aforesaid to convey, in conformity with said bond, for and on behalf of the heirs of the said Samuel Sargeant, deceased, for themselves, their heirs, &c., have granted, bargained, and sold, aliened, released, conveyed, and confirmed, and by these presents do grant, bargain, and sell, alien, release, convey, and confirm, unto the said party of the second part, and to their successors in said office, for the use and benefit of said county of Tippecanoe, the following tract of land, situated lying east of and adjoining the town of Lafayette, county of Tippecanoe, and State of Indiana, eighty rods in length from north to south, and thence east so far as to include ten acres of land; to have and to hold the said granted and bargained premises, with the privileges and appurtenances to the same belonging, or in anywise appertaining, and all the estate, right, title, interest, property, possession, claim, and demand whatsoever which the said party of the first part has, either in law or equity, of, in, and to the same, in the party of the second part, and to their successors in office, or assigns, forever, for the use aforesaid; and the said Richard Johnson, commissioner, &c., of the first part, doth covenant and agree, to and with the said party of the second part, their successors and assigns, that they are well seized of the premises above conveyed, as of a good, sure, perfect, absolute, and indefeasible estate of inheritance in the law and fee simple; that they have good right, full power, and lawful authority, to sell and convey the same to the said party of the second part, and their successors in said office, to hold as aforesaid; and

that in the quiet and peaceable enjoyment of the said premises the said Richard Johnson, commissioner, &c., for and in behalf of the heirs of the said Samuel Sargeant, deceased, will warrant and defend, unto the said party of the second part, and their successors and assigns, forever, against the lawful claim and demand of all persons.

In witness whereof I, Richard Johnson, commissioner, &c., as aforesaid, hereunto set my hand and seal, date first written above.

RICHARD JOHNSON. [SEAL.]

Acknowledged thus:

STATE OF INDIANA,
Tippecanoe county.

On this fifth day of May, eighteen hundred and twenty-eight, before the undersigned, president judge of the circuit court of the first judicial circuit in said State, personally came Richard Johnson, the within named commissioner and grantor, who acknowledged the within to be his proper act and deed.

Given under my hand and seal at Tippecanoe county, in said circuit; date above.

JOHN R. POTTER. [SEAL.]

STATE OF INDIANA,
Tippecanoe county, ss:

I, Mark Jones, clerk of the Tippecanoe circuit court, in the State of Indiana, do hereby certify the foregoing to be a true, full, perfect, and complete transcript of the record of the proceeding had in said cause in said court, as the same appears of record now remaining in my office.

In testimony whereof I have hereunto set my hand, and affixed the [L. S.] seal of said court at office in Lafayette, on this twenty-fifth day of March, A. D. eighteen hundred and forty-seven.

MARK JONES, *Clerk*,
By D. E. CRANE, *Deputy*.

To the production of which aforesaid record in evidence by the said defendant the said plaintiff then and there objected, upon the following grounds assumed by him, namely: The proceedings were coram non judice, and void; as the court had no jurisdiction of the person nor of the subject matter; the bond being void, the court had no jurisdiction to entertain proceedings upon it; the proceedings were between no parties known at the time to the law in Indiana. There was no legal notice of the proceeding; the preliminary steps were not taken to confer jurisdiction, and jurisdiction never attached; and at the time of making said objection, and before the said defendant had closed her evidence, the said plaintiff offered to produce in evidence to the court the following authenticated copy of a paper, to wit:

Notice.

The heirs and legal representatives of Samuel Sargeant, late of the

county of Tippecanoe, and State of Indiana, will please take notice, that I, or my successors in office, will apply to the circuit court of Tippecanoe county aforesaid, to be holden at Lafayette on the first Monday in November next, for a commissioner to be appointed by said court to convey to the board of justices of said county, for the use of said county, in fee simple, by way of general warranty deed, and in pursuance of a title bond given by said Samuel Sargeant in his lifetime, with J. C. Elston, and John Wilson, and Jonathan W. Powers, to said county, dated fourth May, eighteen hundred and twenty-six, all the interest of the Sargeant's heirs to and for the following in-lots in the town of Lafayette, in said county, to wit, all the even numbered lots in said town of Lafayette; and also for a commissioner to be appointed to convey to said county as aforesaid for ten acres of land adjoining said town of Lafayette, in pursuance of a title bond given by said Sargeant in his lifetime to said county. Dated fourth of May, eighteen hundred and twenty-six.

PETER HUGHES,
Agent for Tippecanoe county.

June 10, 1826.—14-3t.

STATE OF INDIANA, *Tippecanoe county.*

On this seventh November, eighteen hundred and twenty-seven, in open court, personally came Reuben Kelsey, who maketh oath that he hath seen the attached publication regularly made in succeeding numbers, for two months in succession, and previous, to this court, as he does believe, and that he is in the *habe.*

REUBEN KELSEY.

SAMUEL HOOVER, *Clerk.*

Endorsed on the back—filed 7th November, 1827.

HOOVER, *Clerk.*

To the production of which last mentioned copy in evidence, as aforesaid, the said defendant then and there objected.

The said defendant then offered in evidence the following authenticated copy of a deed of conveyance, to wit:

This indenture, made this second day of June, in the year of our Lord one thousand eight hundred and twenty-seven, by and between J. C. Elston and Maria, his wife, John Wilson and Margaret, his wife, Jonathan W. Powers and Louisa, his wife, all of the county of Montgomery, and State of Indiana, and Richard Johnson, commissioner, appointed by the Tippecanoe circuit court to convey, for and in the behalf of the heirs of Sam'l Sargeant, dec'd, of the first part, and the board of justices of the county of Tippecanoe, and State of Indiana, of the second part, witnesseth: That whereas, by an act of the legislature of the State of Indiana, approved January twentieth, eighteen hundred and twenty-six, entitled "An act for the formation of a new county out of the county of Wabash, and for establishing the county seat thereof,"

it is enacted, that all that part of the county of Wabash, contained within the boundaries therein specified and set forth, reference being thereunto had will more fully appear, shall form and constitute a new county, to be known and designated by the name of Tippecanoe; and whereas, by the second section of said recited act, commissioners were duly appointed for the purpose of fixing the permanent seat of justice of said new county of Tippecanoe, agreeably to an act entitled "An act for fixing the seat of justice in all new counties hereafter to be laid off," approved January fourteenth, eighteen hundred and twenty-four; and the said commissioners having fixed and established the permanent seat of justice for said new county of Tippecanoe at the town of Lafayette, then laid off on the southeast fraction of section twenty, in township number twenty-three north, of range number four west, in the district of lands sold at Crawfordsville, Indiana, and on the east bank of the Wabash river. And the said parties of the first part of these presents being the owners and proprietors of the said town of Lafayette, in consideration of the seat of justice being established and fixed at the said town of Lafayette, for said new county of Tippecanoe, did, on the fourth day of May, eighteen hundred and twenty-six, execute their certain bond, payable to the board of justices of said new county of Tippecanoe, when organized, and to their successors in said office, in the penal sum of ten thousand dollars, conditioned that they, the said parties of the first part, their heirs, executors, [and] administrators, should, on the first day of October, then next after the date thereof, make, or cause to be made, executed, and delivered, a good and sufficient deed of warranty to the said board of justices of said new county of Tippecanoe, and their successors in said office, for the benefit of said county of Tippecanoe, to every lot in said town of Lafayette which is numbered even on the plat of said town. Now, therefore, in consideration of the said county seat of the said county of Tippecanoe aforesaid being by said commissioners located and established at the said town of Lafayette, in the county of Tippecanoe aforesaid, and State of Indiana, and the cancelling and delivering up by the said party of the second part of these presents to the parties of the first part the aforesaid bond; the said Isaac C. Elston and Maria, his wife, and John Wilson and Margaret, his wife, Jonathan W. Powers and Louisa, his wife, for themselves and for their heirs, and the said Richard Johnson, commissioner as aforesaid, for and in behalf of the heirs of Samuel Sargeant, deceased, have granted, bargained, and sold, aliened, released, conveyed, and confirmed, and by these presents do grant, bargain, and sell, alien, release, convey, and confirm, unto the said party of the second part, and to their successors in said office, for the use and benefit of said county of Tippecanoe, the following tracts or lots of land, situated, lying, and being in the town of Lafayette, county of Tippecanoe, and State of Indiana, and known and designated as lots numbered two, four, six, eight, ten, twelve, fourteen, sixteen, eighteen, twenty, twenty-two, twenty-four, twenty-six, twenty-eight, thirty, thirty-two, thirty-four, thirty-six, thirty-eight, forty, forty-two, forty-four, forty-six, forty-eight, fifty, fifty-two, fifty-four, fifty-six, fifty-eight, sixty, sixty-two, sixty-

four, sixty-six, sixty-eight, seventy, seventy-two, seventy-four, seventy-six, seventy-eight, eighty, eighty-two, eighty-four, eighty-six, eighty-eight, ninety, ninety-two, ninety-four, ninety-six, ninety-eight, one hundred, one hundred and two, one hundred and four, one hundred and six, one hundred and eight, one hundred and ten, one hundred and twelve, one hundred and fourteen, one hundred and sixteen, one hundred and eighteen, one hundred and twenty, one hundred and twenty-two, one hundred and twenty-four, one hundred and twenty-six, one hundred and twenty-eight, one hundred and thirty, one hundred and thirty-two, one hundred and thirty-four, one hundred and thirty-six, one hundred and thirty-eight, one hundred and forty. To have and hold the said granted and bargained premises, with the privileges and appurtenances to the same belonging, or in anywise appertaining, and all the estate, right, title, interest, property, possession, claim, and demand whatsoever, which the said party of the first part has, either of law or equity, of, in, and to the same, to the said party of the second part, and to their successors in said office, or assigns forever, for the use aforesaid; and the said Isaac C. Elston and Maria, his wife, John Wilson and Margaret, his wife, Jonathan W. Powers and Louisa, his wife, do, for themselves, their heirs, executors, and administrators, and the said Richard Johnson, commissioner, for and in behalf of the heirs of Samuel Sargeant, deceased, do covenant and agree, to and with the said party of the second part, their successors and assigns, that they are well seized of the premises above conveyed as of a good, sure, perfect, absolute, and indefeasible estate of inheritance in the law and fee simple. That they, the said Isaac C. Elston and Maria, his wife, John Wilson and Margaret, his wife, Jonathan W. Powers and Louisa, his wife, and the said Richard Johnson, commissioner for and in behalf of the heirs of Samuel Sargeant, deceased, have good right, full power, and lawful authority, to sell and convey the same to the said party of the second part, and their successors in said office, to hold as aforesaid. And that in the quiet and peaceable enjoyment of the said premises the said Isaac C. Elston and Maria, his wife, John Wilson and Margaret, his wife, Jonathan W. Powers and Louisa, his wife, for themselves, their heirs, executors, and administrators, and the said Richard Johnson, commissioner for and in behalf of the heirs of Samuel Sargeant, deceased, will warrant and defend the said party of the second part, and their successors and assigns, forever, against the lawful claim and demand of all persons.

In witness whereof the said Isaac C. Elston and Maria, his wife, John Wilson and Margaret, his wife, Jonathan W. Powers and Louisa, his wife, have hereunto set our hands and seals.

ISAAC C. ELSTON, [SEAL.]
MARIA E. ELSTON, [SEAL.]
JONATHAN W. POWERS, [SEAL.]
LOUISA POWERS, [SEAL.]
JOHN WILSON, [SEAL.]
MARGARET WILSON, [SEAL.]
RICHARD JOHNSON. [SEAL.]

Signed, sealed, and delivered in the presence of—
P. M. CURRY.

STATE OF INDIANA,
Montgomery county, sct:

Be it remembered that, on the second day of June, eighteen hundred and twenty-seven, before me, P. M. Curry, a justice of the peace in and for said county, personally came the above named Isaac C. Elston and Maria E. Elston, his wife, and Jonathan W. Powers and Lovid, his wife, and John Wilson and Margaret, his wife, who severally acknowledged the signing, sealing, and execution of the above and within deed of conveyance; that the same is their proper acts and deed. And the said Maria E. Elston, wife of the said Isaac C. Elston, and the said Lovid, wife of the said Jonathan W. Powers, and the said Margaret, wife of the said John Wilson, being by me made acquainted with the nature and contents of the above and within writing, and by me severally examined, separate and apart from their said husbands, acknowledged the same to be their own voluntary acts and deed, by them made without the fear, persuasion, or coercion of their said husbands. All which by me, from under my hand and seal, the date above.

P. M. CURRY, [SEAL.] *Jus. peace.*

STATE OF INDIANA,
Tippecanoe county.

On this fifth day of May, 1828, before the undersigned, president judge of the first judicial circuit, personally came Richard Johnson, the within named commissioner, and acknowledged the within to be his proper act and deed. Given under my hand and seal, at Tippecanoe county, in said circuit, date above. A true record.

JOHN R. PORTER. [SEAL.]

Recorded June 9th, 1829.

DANIEL BUGHER, *Recorder.*

STATE OF INDIANA,
Tippecanoe county, sct:

I, Sandford C. Cox, recorder, within and *and* for said county, do hereby certify, that the foregoing is a true and complete copy and transcript of the record of the original deed above exhibited, as the same appears of record in book A, pages 298, 299, 300, and 301, of the records here in my office.

In testimony whereof I have hereunto set my hand and seal, officially, at Lafayette, this 27th day of April, A. D. 1848.

SANFORD C. COX, *Recorder.* [SEAL.]

THE STATE OF INDIANA,
Tippecanoe county, ss:

I, Mark Jones, clerk of the Tippecanoe circuit court, in the State of Indiana, do hereby certify, that Daniel Bugher was, on the ninth day of June, A. D. 1829, recorder within and for the county of Tippecanoe, in the State of Indiana, duly elected, commissioned, and qualified, and as such his official acts are entitled to full faith and credit. And I further hereby certify, that Sanford C. Cox, whose signature is affixed to the within and foregoing certificate, was at the date thereof, to wit, on the 27th day of April, A. D. 1848, recorder within and for the county of Tippecanoe, in the State of Indiana, duly elected, commissioned, and qualified, and as such his official acts are entitled to full faith.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at office, in Lafayette, on this tenth day of [L. S.] May, A. D. 1848.

MARK JONES, *Clerk.*
JONATHAN W. POWERS, [SEAL.]
LOUISA POWERS, [SEAL.]
JOHN WILSON, [SEAL.]
MARGARET WILSON, [SEAL.]
RICHARD JOHNSON. [SEAL.]

Signed, sealed, and delivered, in the presence of—
P. M. CURRY.

To the production of which last mentioned copy in evidence the said plaintiff then and there objected, on the grounds assumed by him that the same was void, having been executed without any authority of law, and there being no vendors named in the deed; which said several objections, so made by said plaintiff as aforesaid, the court then and there overruled, and permitted the said papers and copies, and each of them, so offered by said defendant as aforesaid, to be read in evidence, and they were read in evidence to the jury by the said defendant.

The said defendant then gave in evidence to the jury the following authenticated copy of a power of attorney, to wit:

Know all men by these presents, that we, Nabby Sargeant and Benjamin B. Sargeant, of Chester, in the county of Windsor, and State of Vermont, have made, constituted, and appointed, and do by these presents make, constitute, and appoint, Phineas O. Sargeant, of Chester, in said Windsor county, our sufficient and lawful attorney, for us and in our name, to bargain, sell, grant, release, and convey, entire or in separate and convenient parcels, to such person or persons, and for such sum or sums of money, as to our said attorney shall seem most for our advantage and profit, all the land in the town of Lafayette, in the county of Tippecanoe, and State of Indiana, and all the land in said State of Indiana, whereof we are seized in fee; said land being land

that our brother Samuel Sargeant, of said Lafayette, owned in his lifetime in said State of Indiana; and upon such sale or sales covenant, or proper deed or deeds, with such covenant or covenants, general or special, of warranty, quit-claim, or otherwise, as to our said attorney shall seem expedient, in due form of law, as our deed or deeds, to make, seal, deliver, and acknowledge; and for us and in our name to accept and receive all and every sum and sums of money which shall be coming to us on account of the said sale or sales; and upon the receipt thereof suitable acquittance or acquittances in our name and stead to make, seal, and deliver; and generally giving to our said attorney full power and authority touching the premises, to do, execute, proceed, and finish, in all things, in as ample a manner as we might do, if personally present; satisfying and confirming all lawful acts done by our said attorney by virtue hereof.

In testimony whereof we, the said Nabby Sargeant and Benjamin B. Sargeant, have hereunto set our hands and seals, this twenty-fifth day of February, in the year of our Lord one thousand eight hundred and twenty-nine.

NABBY SERGEANT, [L. S.]
BENJAMIN B. SERGEANT. [L. S.]

Signed, sealed, and delivered, in presence of us—
BENJAMIN BLONEY,
JABEZ SARGEANT.

The said defendant then gave in evidence to the jury the four following authenticated copies of deeds, to wit:

Know all men by these presents, that I, Jabez Sargeant, of Chester, in the county of Windsor, and State of Vermont, for the consideration of one hundred dollars, paid to my full satisfaction by Phineas O. Sargeant, of Chester, in the county of Windsor, and State of Vermont, have, and do hereby freely give, grant, sell, and confirm, unto the said Phineas O. Sargeant, his heirs and assigns forever, all the land in the town of Lafayette, in the county of Tippecanoe, and State of Indiana, and all the land in the said county of Tippecanoe whereof I am seized in fee; said land being land in said town of Lafayette, and in said county of Tippecanoe, that my brother Samuel Sargeant of said Lafayette owned at his decease in said county of Tippecanoe, with all the land the said Samuel Sargeant owned in said State in his lifetime.

To have and to hold the above granted and bargained premises, with all the privileges and appurtenances thereof, to the said Phineas O. Sargeant, [his] heirs and assigns, to his and their own use and behoof forever; and the said Jabez Sargeant, for himself and his heirs, executors, and administrators, does covenant with the said Phineas O. Sargeant, that until the ensealing of these presents he is the sole owner of the premises, and that they are free from every encumbrance, and I do hereby engage to warrant and defend the same against all lawful claim whatsoever.

In witness whereof I have hereunto set my hand and seal this twen-

ty-sixth day of February, in the year of our Lord one thousand eight hundred and twenty-nine.

JABEZ SARGEANT. [L. S.]

Signed, sealed, and delivered, in presence of—
BENJAMIN SWAN,
ASA WHEELER.

This indenture, made the fifteenth day of June, in the year of our Lord one thousand eight hundred and thirty-nine, between Nabby Sargeant, Benjamin B. Sargeant, and Phineas O. Sargeant, of Chester, in the county of Windsor, and State of Vermont, of the first part; and John McCormick, of the county of Tippecanoe, and State of Indiana, of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of four hundred and eight dollars, lawful money of the United States, to them in hand paid by the said party of the second part, receipt whereof is hereby acknowledged, have granted, bargained, aliened, sold, released, and conveyed, and by these presents do grant, bargain, sell, alien, release, and convey, unto the said party of the second part, and to his heirs and assigns forever, all the following described tracts or parcels of land, to wit:

Lot ninety-three, in the town of Lafayette, county of Tippecanoe, and State last aforesaid, as the same is known and designated on the plat of said town; also fraction number two, as designated on the plat of said town; also one equal and undivided half of fractions number three and four, as designated on the plat of said town; also a part of the southeast fraction of section twenty, town. twenty-three north, of range four west, Crawfordsville land district, situated in said county of Tippecanoe, and bounded as follows, to wit:

Beginning at a point where a line drawn east through the centre of Main street in said town of Lafayette will strike the eastern boundary of a tract of ten acres of land heretofore donated to the county of Tippecanoe, and conveyed to the board of justices of said county by Richard Johnson, a commissioner for that purpose appointed; by the circuit court of said county, by deed bearing date the fifth day of April, eighteen hundred and twenty-eight, in pursuance of a bond before that time executed by Samuel Sargeant, deceased; running thence east, along and in a direction with said line, to a tract of land now owned by John Johnson, and heretofore purchased by said Johnson of Reuben Kelsey, being a tract of fifteen acres on the east end of the above described fraction; thence north, along the said land of the said John Johnson, to a point where a line drawn east from the centre of ferry in said town of Lafayette would meet the same; thence west, along said line, to the eastern boundary of the before mentioned donated tract of ten acres; thence south, along the east bounds of the last mentioned tract, to the place of beginning, with proper variations to suit the several lines above described, containing one acre and one-fourth of an acre of land, more or less; also one acre of land, in a square form, lying in the north-

east corner of the said southeast fraction of section twenty, town. twenty-three north, of range four west; also all the land in said last mentioned fraction which lies south of said town of Lafayette, beginning at a point twenty-three feet north of the northeast corner of lot number one hundred and forty in said town; running thence north to the northern boundary line of said fraction; and thence west, along said line, to the bank of the Wabash river; together with all and singular the appurtenances and hereditaments thereunto belonging or in anywise appertaining; and all the estate, right, title, interest, claim, and demand whatsoever of the said parties of the first part, either in law or equity, of, in, and to the above described premises, with the appurtenances, and the remainder and remainders, reversion and reversions, rents, issues, and profits thereof; to have and to hold the premises above mentioned and particularly described, with the appurtenances, to the said John McCormick, his heirs and assigns, forever; and the said parties of the first part, for themselves, their heirs, executors, and administrators, do covenant, grant, and agree, to and with the said John McCormick, his heirs and assigns, that the said Nabby, Benjamin, and Phineas, parties of the first part, are lawfully seized in fee simple of the aforesaid granted premises; that the same are free from all encumbrances, and that they have good right, full power, and lawful authority, to sell and convey the same in manner and form aforesaid; and further, that the said parties of the first part, their heirs, executors, and administrators, will warrant and forever defend the aforesaid premises, with their appurtenances, and every part thereof, unto the said party of the second part, his heirs, and against the lawful claims and demands of any and all persons whomsoever.

In witness whereof the said Phineas O. Sargeant, by virtue of the power of attorney, bearing date the twenty-fifth day of February, eighteen hundred and twenty-nine, recorded in the recorder's office of the said county of Tippecanoe, him in that behalf enabling, hath hereunto set the hands and seals of the said Nabby Sargeant and Benjamin B. Sargeant, and hath for himself hereunto set his own hand and seal, the day and year first above written.

NABBY SARGEANT, [L. S.]
BENJAMIN B. SARGEANT, [L. S.]
By their att'y, PHINEAS O. SERGEANT,
PHINEAS O. SARGEANT. [L. S.]

Signed, sealed, and delivered, in presence of—
ALBERT S. WHITE.

This indenture, made the twenty-second day of June, eighteen hundred and twenty-nine, between Nabby Sargeant, Benjamin B. Sargeant, and Phineas O. Sargeant, of Chester, in the county of Windsor, and State of Vermont, of the first part, and John McCormick, of the county of Tippecanoe, of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of one hun-

dred and forty-five dollars, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, released, and conveyed, and by these presents do grant, bargain, sell, alien, release, and convey, unto the said John McCormick, and to his heirs and assigns, forever, all the following described tracts or parcels of land, to wit: Lot number one hundred and nine, (109,) in the town of Lafayette, said county of Tippecanoe, as the same is known and designated on the plat of said town, for the consideration of forty dollars, parcel of the above sum of one hundred and forty-five dollars; also lot number one hundred and twenty-five, in said town, as the same is known and designated on the plat thereof, for the consideration of thirty dollars, parcel of the said sum of one hundred and forty-five dollars; also a part of the south fraction of the southeast quarter of section number twenty, town[ship] twenty-three north, of range number four west, in said county of Tippecanoe, and bounded as follows, to wit, beginning at a point thirty-three feet north of the northeast corner of lot number one hundred and forty, in said town of Lafayette; running thence, north, to the division line between the south and north fractions of the southeast quarter of section twenty, town[ship] twenty-three north, of range four west; thence east, on the line dividing said fractions, to the northwest corner of a tract of land now owned by John Johnson, and heretofore purchased by said Johnson of Reuben Kelsey, being a tract of fifteen acres, on the east end of the above described south fraction; thence south, along the west line of said Johnson's land, to a point where a line drawn east through the center of Ferry street, in said town of Lafayette, will strike the same; thence west, along and in direction with said last mentioned line, to the eastern boundary line of a tract of ten acres, heretofore donated to the county of Tippecanoe, and conveyed to the board of justices of said county by Richard Johnson, a commissioner for that purpose appointed by the circuit court of said county, by deed bearing date the fifth day of April, eighteen hundred and twenty-eight, in pursuance of a bond before that time executed by Samuel Sargeant, now deceased, being all the land lying on the east, north, west, and northwest sides of said donated tract of ten acres, which is included between the said donated tract and the boundary line above particularly described, containing one acre and three-quarters of an acre, be the same more or less, for the consideration of seventy-five dollars, parcel of the first valued sum of one hundred and forty-five dollars; together with all and singular the appurtenances and hereditaments thereunto belonging, or in anywise appertaining; and all the estate, right, title, interest, claim, and demand whatsoever, of the said parties of the first part, either in law or equity, of, in, and to the premises above described, with the appurtenances. To have and to hold the premises above mentioned and particularly described, with the appurtenances, unto the said John McCormick, his heirs and assigns, forever. And the said parties of the first part, for themselves, their heirs, executors, and administrators, do covenant, grant, and agree, to and with the said John McCormick, his heirs

and assigns, that the said Nabby, Benjamin, and Phineas, parties of the first part, are lawfully seized in fee of the aforesaid granted premises; that the same are free from all encumbrances; and that they have good right, full power, and lawful authority, to sell and convey the same in manner and form aforesaid; and, further, that the said parties of the first part, their heirs, executors, and administrators, will warrant and forever defend the aforesaid premises, with the appurtenances, and every part thereof, unto the said party of the second part, his heirs and assigns, against the lawful claims and demands of any and all persons whomsoever.

In witness whereof the said Phineas O. Sargeant, by virtue of a power of attorney, bearing date the twenty-fifth day of February, eighteen hundred and twenty-nine, recorded in the recorder's office of the said county of Tippecanoe, him in that behalf enabling, hath hereunto set the hands and seals of the said Nabby Sargeant and Benjamin B. Sargeant, and hath for himself hereunto set his own hand and seal the day and year first above written.

NABBY SARGEANT, [SEAL.]
BENJAMIN B. SARGEANT, [SEAL.]
By their Att'y PHINEAS O. SARGEANT,
PHINEAS O. SARGEANT. [SEAL.]

Signed, sealed and delivered, in presence of—
DANIEL BUGHER.

This indenture, made this fifteenth day of June, in the year of our Lord one thousand eight hundred and twenty-nine, between Nabby Sargeant, Benjamin B. Sargeant, and Phineas O. Sargeant, of Chester, in the county of Windsor, and State of Vermont, of the first part, and Isaac Edwards, of the county of Tippecanoe, and State of Indiana, of the second part, witnesseth: That the said parties of the first part, for and in consideration of the sum of one hundred and eighty-nine dollars, lawful money of the United States, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, released, and conveyed, and by these presents do grant, bargain, sell, alien, release, and convey, unto the said Isaac Edwards, and to his heirs and assigns forever, all those certain tracts or parcels of land, lying and being in said county of Tippecanoe, to wit, lot number one hundred and twenty-seven, in the town of Lafayette, county and State last aforesaid, as known and designated on the plat of said town; also a part of the south east fraction of section twenty, town [ship] twenty-three north, of range four west, in the district of land sold at Crawfordsville, and bounded as follows, to wit: Beginning at the southeast corner of a tract of ten acres, heretofore donated to the county of Tippecanoe, and conveyed to the board of justices of said county by Richard Johnson, a commissioner appointed by the circuit court of said county, by deed bearing date the fifth day of April, eighteen hundred and twenty-eight, in pursuance of a bond before that time executed by Samuel Sargeant, de-

ceased; thence running east, along the line dividing sections twenty and twenty-nine, to a tract of land now owned by John Johnson, and heretofore purchased by said Johnson of Reuben Kelsey, being a tract of fifteen acres on the east end of the above described fraction; thence north, along the line of the said land of the said John Johnson, to a point where a line drawn east through the centre of Main street, in said town of Lafayette, would meet the same; thence west, along said line, to the eastern boundary of the before mentioned donated tract of ten acres; thence south, along the east bounds of the last mentioned tract, to the place of beginning, with the proper variations to suit the several lines above described, containing three acres more or less; together with all and singular the appurtenances and hereditaments thereunto belonging, or in any wise appertaining, and all the estate, right, title, interest, claim, and demand whatsoever, of the said parties of the first part, either in law or equity, of, in, and to the above described premises, with the appurtenances, and the reversion and reversions, remainder, and remainders, rents, issues and profits thereof; to have and to hold the premises above mentioned and particularly described, with the appurtenances, to the said party of the second part, his heirs and assigns forever; and the said parties of the first part, for themselves, their heirs, executors, and administrators, do covenant, grant, and agree, to and with the said Isaac Edwards, his heirs and assigns, that the said Nabby, Benjamin, and Phineas O. Sargeant, parties of the first part, are lawfully seized in fee of the aforesaid granted premises; that the same are free from all encumbrances, and that they have good right, full power, and lawful authority to sell and convey the same in manner and form aforesaid; and further, that the said parties of the first part, their heirs, executors, and administrators, will warrant and forever defend the aforesaid premises, with their appurtenances, and every part thereof, unto the said Isaac Edwards, his heirs and assigns, against the lawful claims and demands of any and all persons whomsoever.

In witness whereof the said Phineas O. Sargeant, by virtue of a power of attorney bearing date the twenty-fifth day February, eighteen hundred and twenty-nine, recorded in the recorder's office of the said county of Tippecanoe, him in that behalf enabling, hath hereunto set the hands and seals of the said Nabby Sargeant and Benjamin B. Sargeant, and hath for himself hereunto set his own hand and seal, the day and year first above written.

NABBY SARGEANT, [SEAL.]
BENJAMIN B. SARGEANT, [SEAL.]
By their att'y, PHINEAS O. SARGEANT,
PHINEAS O. SARGEANT. [SEAL.]

Signed, sealed, and delivered, in presence of—
ALBERT S. WHITE,
DANIEL BUGHER.

And afterwards, and after the testimony on the side of the defendant had been closed, the said plaintiff proved that the first election for jus-

tices of the peace, for Tippecanoe county, was held on the third Monday in June, eighteen hundred and twenty-six, pursuant to the proclamation of the governor of Indiana in that behalf, and that the commissions of said justices, as appears from the records of the Secretary of State of Indiana, bear date on ; and that said justices held their first session on the eighth day of July, eighteen hundred and twenty-six, (being Saturday,) as set forth in the foregoing record thereof; and that said justices did not hold any other session, or meet as a board at any other time, until after the death of said Samuel Sargeant.

And after the evidence on both sides had been closed, the said plaintiff moved the court to charge the jury as follows, to wit:

1st. That the title bonds given in evidence by the defendant *is* void as against Samuel Sargeant and his heirs, for want of an obligee in being capable of being contracted with at the time of the delivery of said bond.

2d. That the said title bond is a nullity as against said Sargeant and his heirs.

3d. That the record and proceedings of the Tippecanoe circuit court, and the commissioner's deed in pursuance thereof, are wholly void, and did not divest the title of Samuel Sargeant's heirs.

4th. That the certified copy of the notice, and proof of publication given in evidence by the plaintiff, is a part of the record of the proceedings of the Tippecanoe circuit court, and as such may explain and qualify the statement in the record, that proof was made that "due and legal notices had been given;" which said several instructions and each of them the court refused to give to the jury; but charged the jury that the said record of the Tippecanoe circuit court is not void, and that the above proof, so produced and given in evidence by the said defendant are competent evidence to prove a dedication to public use and the title of the premises in controversy out of the lessors of the plaintiff.

To which said several opinions and decisions of the court in admitting said evidence, so as above offered by the defendant and objected to by the plaintiffs, and in refusing to charge the jury as moved by the said plaintiff as above stated, and to the charge so as above given by the court to the jury, the said plaintiff excepts, and prays that this his bill of exceptions may be signed, sealed, and made a part of the record in this cause, which is done, &c.; both parties agreeing in open court that in making up of the record, whenever the words "here insert" occur in this bill of exceptions, the clerk shall copy and insert the documents indicated. And that the printed statutes of Indiana, so far as applicable to this cause, shall be deemed and taken as part of the record in this cause, and so considered by the Supreme Court.

JOHN McLEAN. [SEAL.]

And afterwards, to wit, on the thirty-first day of May, being the seventeenth judicial day of the aforesaid term of said court, come the parties, by their counsel; and in open court, on motion of the plaintiff,

the court grant and allow a writ of error in this case to the Supreme Court of the United States.

Ordered by the court, that the plaintiff give bond in the penal sum of eight hundred dollars, with resident security, to be approved of by the clerk of this court, conditioned according to law.

And afterwards, to wit, at the May term of said court, begun and holden at Indianapolis, in said district, before the honorable Elisha M. Huntington, district judge of the United States, for the district of Indiana, on the twentieth day of May, A. D. eighteen hundred and fifty, that being the first judicial day of the May term of said court aforesaid.

The plaintiffs now come, and move the court to grant a writ of error in this case to the Supreme Court of the United States, which is allowed by the court; and that a citation do issue to said State Bank of Indiana to appear to said case in error in said Supreme Court. And day is given, &c.

And afterwards, to wit, at the May term of said court aforesaid, begun and holden as aforesaid, before the honorable Elisha M. Huntington, judge as aforesaid, on the twenty-eighth day of May, A. D. eighteen hundred and fifty, that being the eighth judicial day of said term aforesaid; the plaintiffs come, and on their motion a writ of error is issued and filed in this court, in these words, to wit:

INDIANA DISTRICT, *sct:*

The President of the United States, to the honorable the judges of the circuit court of the United States, for the district of Indiana, greeting:

Because, in the record and proceedings, and also in the rendition of a judgment, of a plea in said circuit court, between Phineas O. Sargeant, Nabby Sargeant, Jabez Sargeant, and Benjamin B. Sargeant, plaintiffs, and the State Bank of Indiana, defendant, a manifest error hath happened to the great damage of said plaintiff, as by his said complaint appears; we being willing that error, if any, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, you distinctly and openly send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, so that you have the same, together with this writ, before the chief justice and associate justices of the said Supreme Court, on the first Monday of December next, at the city of Washington, the present seat of the national Government; that the record and proceedings aforesaid being inspected, the Supreme Court may cause further to be done therein, to correct that error, what of right, and according to the law and customs of the United States, should be done.

Witness honorable Roger B. Taney, chief justice of the said Supreme Court, this 20th day of May, A. D. 1850.

Issued at office, in the city of Indianapolis, under the seal of the

[L. S.] circuit court of the United States, for the district of Louisiana, the day and year last aforesaid.

HORACE BASSETT, *Clerk.*

And the court require bond to be given in the penal sum of eight hundred dollars, conditioned for the due prosecution of the writ of error, and for the payment of costs; which bond is now filed with Oliver H. Smith, security, who is approved of by the court; which bond is in the words and figures following, to wit:

Know all men by these presents, that I, Oliver H. Smith, am held and firmly bound unto the State Bank of Indiana in the penal sum of eight hundred dollars; and to the payment whereof, well and truly to be made, I bind myself and heirs, firmly by these presents. Signed and sealed with my seal, and dated this twenty-eighth day of May, eighteen hundred and fifty. The condition of the above obligation is such that, whereas John Doe, ex dem. Phineas O. Sargeant, Nabby Sargeant, Jabez Sargeant, and Benjamin B. Sargeant, heirs-at-law of Samuel Sargeant, deceased, is about to prosecute a writ of error from the circuit court of the United States, for the district of Indiana, to the Supreme Court of the United States, in a certain cause lately decided in said circuit court for said district, wherein the said John Doe, under said demise, was plaintiff, and the said State Bank of Indiana was the the defendant in trespass and ejectment.

Now, should the said lessors of the plaintiff, the plaintiff in error, well and truly prosecute said writ of error, and pay and satisfy all costs that may be adjudged against him in the Supreme Court aforesaid, then the above obligation to be void, else to be and remain in full force and virtue.

O. H. SMITH. [SEAL.]

And thereupon the following citation is issued to the marshal of the State of Indiana, to wit:

INDIANA DISTRICT, *sct.*

The President of the United States, to the State Bank of Indiana, greeting:

Said Bank is hereby admonished and cited to be and appear at a Supreme Court of the United States, to be holden at Washington city on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States, for the district of Indiana, wherein Phineas O. Sargeant, Jabez Sargeant, Nabby Sargeant, and Benjamin B. Sargeant, heirs-at-law of Samuel Sargeant, are plaintiffs, and the said State Bank of Indiana is defendant in error; to show cause, if any there be, why judgment rendered against said Phineas O. Sargeant, Jabez Sargeant, Nabby Sargeant, and Benjamin B. Sargeant, heirs-at-law of Samuel Sargeant, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in this behalf.

Witness the honorable Elisha M. Huntington, sole judge of said court, in the absence of the honorable John McLean, one of the justices of the Supreme Court of the United States, the twenty-eighth day of May, A. D. 1850.

E. M. HUNTINGTON.

Upon which the marshal makes the following return, to wit:

Served the within upon Albert S. White and Z. Baird, attorneys for the State Bank of Indiana, and upon James Morrison, president of said State Bank, by giving each of them true copies of this writ; the said White & Baird on the thirtieth day of May, 1850, and the said James Morrison the eighth day of June, eighteen hundred and fifty.

S. MEREDITH,
Marshal, United States, Dist. Ind.
By W. P. HANNAH,
Deputy.

HORACE BASSETT,
Clerk U. S. Court, Ind. Dist.

In obedience to the foregoing writ of error, I transmit to the Supreme Court of the United States a duly certified transcript of the record and proceedings of the circuit court of the United States, for the district of Indiana, in a plea in said writ mentioned.

HORACE BASSETT,
Clerk U. S. C. C., district of Indiana.

INDIANA DISTRICT, *ss:*

I, Horace Bassett, clerk of the circuit court of the United States, for the district of Indiana, certify, that the foregoing, from page one to page fifty inclusive, is a full and true transcript of the record and proceedings of said court, in a certain matter of controversy therein determined between John Doe, ex dem. Phineas O. Sargeant, Nabby Sargeant, Jabez Sargeant, and Benjamin B. Sargeant, is plaintiff, and the State Bank of Indiana is defendant, as the same now is of record on file in my office.

In testimony whereof I hereto subscribe my name, and affix the [SEAL.] seal of said court, at office in the city of Indianapolis, the 9th day of August, A. D. 1850.

HORACE BASSETT, *Clerk.*

SUPREME COURT OF THE UNITED STATES, *ss:*

PHINEAS O. SARGENT, JABEZ SARGENT, NABBY SARGENT, and BENJAMIN B. SARGENT, vs. THE STATE [BANK] OF INDIANA. } Error.

And now, at this day, come the plaintiffs in error, and say, that in

the record and proceedings, and in the rendition of judgment in the within case, manifest errors have intervened, in this:

First: The circuit court erred in permitting the evidence given by the defendants to go to the jury, as appears by the bill of exceptions.

Second: The judgment of the circuit court was rendered for the defendant contrary to law.

Third: The circuit court erred in refusing to give to the jury the charges asked by plaintiffs.

Fourth: The circuit court erred in giving the charges to the jury that were given.

For all of which errors, and others in the record, the plaintiffs in error pray that the judgment may be reversed, and that they may be restored to all the things they have lost thereby.

O. H. SMITH,
Attorney for P'ffs.